IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19092 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANSUKHBHAI BHAVANBHAI GADARA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR M.R. Prajapati for Mr. TUSHAR MEHTA for Petitioner(s) : 1,
Mr LR Pujari, Asstt.GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
MR M.IQBAL A SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 07/12/2007

ORAL JUDGMENT

1. The petitioner-detenu has challenged the order of detention dated 15.6.2007 passed by the

District Magistrate, Rajkot, by way of filing this petition. The petitioner is detained under the provisions of the Prevention of Black Marketing and Mainenance of Supplies of Essential Commodities Act, with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community. The petitioner has been in the custody at Vadodara Central Jail. The petitioner has challenged the detention order on various grounds including the delay in deciding the representation made by him. In pursuance of the detention order, FIR being C.R. No.29/2007 has been registered with Gandhigram police station.

2. Heard the learned advocate for the petitioner, learned Addl. Central Government Standing Counsel and the learned AGP.

3. It is submitted by the learned AGP, Mr L.R. Pujari that though the State Government has immediately sent the representation made by the detenu to the Central Government, the Central

Government has called for some comments on the averments made in the representation from the State Government and the State Government has in turn, after getting the comments from the District Magistrate, Rajkot (detaining authority) and after receiving the same, parawise remarks were sent on 17.9.2007. It is submitted by the learned Addl.Central Government Standing Counsel, Mr Shaikh, that during the pendency of this Special Civil Application, as the Central Government has not received the remarks from the State Government, it was not decided on 24.8.2007. From the above facts, it seems that the representation was decided on 28.9.2007 by which the representation of the detenu was rejected by the Central Government.

4. It seems that from the above facts, that without any cause, much delay was caused in deciding the representation made by the detenu by the Central Government. No cogent or convincing reason which satisfied this court that, there was sufficient reason for causing the delay in deciding the representation made by the detenu. It is pertinent

to note that when the representation was forwarded by the State Government to the Central Government, the entire set of papers along with the grounds of detention was forwarded to the Central Government. From these documents and papers, the Central Government could very well decide the representation.

5. It is further submitted by the learned AGP that except the above, no other material was sent to the Central Government which was required for deciding the representation, as all the materials were placed before the Central Government by the State Government at the time of passing the order of detention.

6. In view of the above, in the opinion of this court, the representation was not decided within the stipulated time by the Central Government and only on this ground, the order passed by the detaining authority is required to be quashed and set aside.

7. In the result, this Special Civil Application is allowed. The order of detention

dated 15.6.2007 passed by the District Magistrate, Rajkot is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[M.D. SHAH, J.]

msp